

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Bernard McFadden, #199135,	)	
	)	
Petitioner,	)	C.A. No. 3:09-2927-JMC
	)	
v.	)	<b>ORDER</b>
	)	
Simon Major,	)	
Director of Sumter-Lee Regional	)	
Detention Center	)	
Respondent.	)	
_____	)	

This matter is before the court on the *pro se* Plaintiff's Petition for Writ of Habeas Corpus in which he seeks an order compelling his attorney to file a motion for reconsideration of his bond. Plaintiff also seeks to amend [Doc. # 18] his petition to add a new claim for relief. Defendant Simon Major moved to dismiss Plaintiff's petition [Doc. #14]. The Magistrate Judge's Report and Recommendation [Doc.# 25], filed on January 14, 2011, recommends that the petition be dismissed as moot since Plaintiff's bond has been lowered to its original amount of \$10,000. The Magistrate Judge further recommends that the petition and the proposed amendment be dismissed under the *Younger* abstention doctrine. Further, that the proposed amendment be dismissed as futile. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge's recommendation herein without a recitation.

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or

recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation [Doc. # 25, at 7]. However, Plaintiff filed no objections to the Report and Recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Doc. # 25]. It is therefore **ORDERED** that Defendant Simon Major's Motion to Dismiss [Doc. # 14] is **GRANTED** and Plaintiff's petition is dismissed. It is further **ORDERED** that Plaintiff's Motion to Amend is [Doc. # 18] is **DENIED**.

The law governing certificates of appealability provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a

substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met.

**IT IS SO ORDERED.**

s/J. Michelle Childs  
United States District Judge

Greenville, South Carolina  
February 7, 2011